REMARKS

Claims 1-22 are pending in the present application, however claims 3-22 are withdrawn from consideration due to a restriction requirement and are cancelled herein. Claim 2 has been allowed and claim 1 stands rejected.

Claim 1 has been rejected under 35 U.S.C. §101 on the grounds that the invention is directed to non-statutory subject matter. The Office Action states that the claimed mutant protein has the same characteristics and utility as that found in nature. The Office suggests amending the claim to recite a purity limitation such as "isolated protein" to obviate the rejection.

Claim 1 is canceled and rewritten herein as new claim 23, to improve readability and conform to standard claim format with standard transitional language. The purity limitation suggested by the Office also has been included in this amendment, therefore Applicants submit that this rejection has been overcome. Applicants request that the rejection of claim 1 as directed to non-statutory subject matter be withdrawn.

Claim 1 also has been rejected under 35 U.S.C. §102(b) as anticipated by Solache et al. This reference is cited as "clearly teach[ing] an isolated mutant cytomegalovirus pp65 capable of eliciting a CTL response against cells infected with cytomegalovirus." Applicants respectfully traverse this rejection.

Claim 1 has been canceled and rewritten as new claim 23. This claim is directed to a cytomegalovirus protein which comprises a mutant pp65 that lacks protein kinase activity and that elicits a CTL response against cells infected with cytomegalovirus. To make out a case for anticipation, the Office must show that the cited reference contains, within its four corners, each and every claim limitation of the rejected claim.

M.P.E.P. §2131. Applicants submit that the Office cannot make out a case for anticipation against new claim 23 or against canceled claim 1.

The invention claimed and described in this application relates to a mutant cytomegalovirus protein (pp65) that lacks protein kinase activity. The cited reference, Solache et al. relates to identification of HLA-restricted CTL epitopes in pp65 and does not teach either a mutant pp65 protein or any pp65 protein that lacks protein kinase activity. The reference refers to the pp65 proteins of several different strains of cytomegalovirus (see Table II) with coding substitutions, but each is a native sequence, not a mutant protein. Native sequences of pp65 are known to possess protein kinase activity. Further, no CMV protein was tested for protein kinase activity and the term protein kinase is not mentioned by Solache et al. Therefore, the Solache et al. reference lacks any teaching or suggestion of at least one claim limitation present in both claim 1 and in new claim 23.

This reference thus cannot form a proper basis for the rejection under 35 U.S.C. §102(b) or under 35 U.S.C. §103. In summary, the cited references does not teach or suggest a mutant pp65 protein that lacks protein kinase activity and that elicits a CTL response against cells infected with cytomegalovirus. Applicants therefore respectfully request that the rejection of claim 1 on the grounds of anticipation be withdrawn.

Applicants believe that the present application is in condition for allowance and request favorable consideration at this time.

RESPECTFULLY SUBMITTED,					
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